HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 156 of 2004 (S/S)
Bhuwan Chand Upadhyay
Vs.
State of Uttaranchal & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 8.7.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 156 of 2004(SS)

Bhuwan Chand Upadhyay ..... Petitioners

Versus

State of Uttaranchal & others ..... Respondents

Sri. P.C. Jhingan, Advocate for the petitioners.
Standing Counsel for the respondent.

Dated: July 8, 2004

Hon'ble Rajesh Tandon,J.

Heard the learned counsel for the parties at length.

The present writ petition has been filed for the issue of a writ in the nature of mandamus commanding the respondents to regularise the petitioner on the post of Junior Clerk in the Forest Department.

Briefly stated the facts giving rise to the present writ petition is that petitioner is working in the Yamuna Circle Forest Division, since 1.12.88 as Junior Clerk on ad hoc basis. The scheme of regularization of daily wagers class III group 'C' employees has already been notified in 1998 but the respondents have deliberately and willfully delayed the matters to the detriment of the petitioners and other daily wages employees of this category.

The Apex Court has held in the case of Daily Rated Casual Labour vs. Union of India (1998) 1 SCC 122 as under:

"India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment the right to just and favourable conditions of work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that

they may contribute to the maximization of production. It is again for this reason that managements and governmental agencies in particular should not allow the workers to remain as casual labourers or temporary employees for an unreasonable long period of time."

The learned counsel for the petitioners has also referred the judgment of Apex Court in the case of State of U.P. & others vs. Putti Lal 2002(1) E.L.C. 524 (SC). In that case it has been held that daily wagers would be entitled to draw at the minimum of the pay scale being received by their counters part in the Government and the question of their regular absorption will obviously be dealt with in accordance with the statutory rule. The order is mutatis mutandis apply to the State of Uttaranchal as held by the Apex Court as under:

"So far as the State of Uttaranchal is concerned, a scheme for regularisation of daily workers has been produced before us which prima facie does not appear to be objectionable exception the provision regarding qualification for regularization. Be it sated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employees was taken in as a daily wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how may posts would be created for the absorption of these daily wages workers. Needless to mention that the Appropriate Authority will consider the case for these daily wagers sympathetically who have discharged the duties for all these years to the

satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government until his services are regularised and he is given regular scale of pay."

The petitioners have also filed copy of judgment of Hon. Mr. Justice P.C. Verma, Acting Chief Justice of this Court. His Lordship in Writ Petition No. 3431 of 2001 (SS) Smt. Nandi Khanna vs. State of Uttaranchal has passed the following order:

"The petitioner is still being treated for the purpose of regularisation as Daily Wager. It is illegal, as the petitioner is working on Ad hoc basis w.e.f. 22.6.1992 and is being paid the pay scale of Junior Clerk, therefore, the petitioner is eligible to be considered for regularsation under the Regularisation of Ad hoc Appointments Rules (out of Public Services Commission Rules 1979) as amended up to date by State of Uttaranchal. Therefore, the respondents are directed to consider the case of the petitioner for regularisation under the aforesaid Rules within a period of one month from the date of production of a certified copy of this order.

However, the petitioner's services shall not be terminated unless she is found unsuitable for being retained and regularised for Class III posts."

In view of the facts and circumstances mentioned above, the petitioner shall be at liberty to move a representation within three weeks after obtaining certified copy of the order. The respondents are directed to consider the representation of the petitioner for regularisation in accordance with the

qualification, other eligibility criteria and in accordance in with the recruitment rules, within a period of six weeks after filing the representation.

Subject to the aforesaid observations, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

July 8, 2004

*Dhyani